ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISION I

CACR06-567

January 17, 2007

APPEAL FROM THE JEFFERSON COUNTY CIRCUIT COURT
[CR-01-663-5, CR-03-255-5]

MARK ANTHONY CONNER
APPELLANT

V.

HONORABLE ROBERT H. WYATT, JR., JUDGE

STATE OF ARKANSAS
APPELLEE

AFFIRMED IN PART; REVERSED AND REMANDED IN PART

This is a probation-revocation case. Appellant, Mark Conner, was sentenced to three years' probation after pleading *nolo contendere* to the underlying charges of fraudulent use of a credit card, second-degree forgery, and possession of a controlled substance. His probation was revoked on February 10, 2006, based on his commission of additional felony offenses during the period of his probation. The trial court sentenced him to twenty years in the Arkansas Department of Correction. Appellant raises two points of appeal: 1) was appellant provided with the written terms and conditions of his probation; and 2) was appellant's sentence of twenty years beyond the maximum allowed by statute. We affirm on the first point. The State concedes error on the second point involving sentencing, and we agree. We therefore reverse and remand for resentencing.

For his first point of appeal, appellant contends that "there was no evidence introduced at the revocation hearing that was intended to show, or would unintentionally show that Mr. Conner was given any written conditions or terms of his probation ... [and] [b]ecause there was not sufficient evidence presented at the revocation hearing to show that Mr. Conner had received that specific term of his probation, that condition of his probation cannot be enforced, and the revocation should be dismissed." We disagree.

Arkansas Code Annotated section 5-4-303(g) (Supp. 2005) provides: "If the court suspends imposition of sentence on a defendant or places him or her on probation, the defendant shall be given a written statement explicitly setting forth the conditions under which he or she is being released." The record in this case contains a copy of the conditions of suspended sentence or probation that were signed by appellant on April 26, 2004. Appellant has cited no authority for the proposition that the written terms and conditions of probation must be admitted into evidence at a revocation hearing or that "some evidence must be presented that would tend to prove that the defendant was presented with the written terms and conditions of his probation." In addition, the issue is a procedural one that is waived by the failure to raise it to the trial court. *Nelson v. State*, 84 Ark. App. 373, 141 S.W.3d 900 (2004). In *Nelson,* 84 Ark. App. at 379-80, 141 S.W.3d at 904-05, we explained:

> We acknowledge that the sufficiency of the State's proof as to violating a condition of probation may be challenged on appeal of a revocation in the absence of a directed-verdict motion. However, the rule requiring one to make procedural and evidentiary objections known to the trial court is still a viable rule of law. At no time did appellant raise this issue by pointing out to the trial court that he had not

> been furnished a written statement of his conditions or by objecting to the revocation hearing on that ground. In fact, appellant stipulated that the evidence put forth in the bench trial would serve as the State's basis to revoke his probation. This court will not consider issues raised for the first time on appeal.
>
> The reason for the statutory requirement in Ark. Code Ann. § 5-4-303 (Repl. 1997) that probationary conditions be given to probationers in writing is to avoid misunderstanding by the probationer. This requirement comports with due process; otherwise, the trial courts have no power to imply and then later revoke on conditions that were not expressly communicated in writing to the defendant. This is not an issue of jurisdiction that can be raised at any time; it is instead a procedural issue that is waived by appellant's failure to raise it to the trial court. In *Cavin v. State, supra*, Cavin challenged the revocation of his probation on appeal arguing (1) that there was insufficient evidence to revoke, and (2) that he was never given a written statement of conditions in compliance with the statutory mandate to do so. Our court rejected both contentions on appeal, the second because it was a procedural matter that appellant failed to object to at the proper time, waiving the issue for consideration on appeal. Failure to object at the proper time waives rights otherwise afforded to a criminal defendant. Appellant has failed to provide any convincing argument or authority to support his contention that this procedural matter is equivalent to a challenge to the sufficiency of the evidence to support finding a violation of one of those written conditions, and we therefore affirm the revocation.

(Citations omitted.) Similar to the situation presented in *Nelson,* appellant did not raise this issue before the trial court. *See also Whitener v. State*, ___ Ark. App. ___ , ___ S.W.3d ___ (Oct. 25, 2006). Therefore, it was not preserved for our review.

For his remaining point of appeal, appellant contends that his twenty-year sentence was beyond the statutory maximum allowed. We agree.

The February 14, 2006 judgment and commitment order provides that the sentences imposed upon appellant for the offenses of fraudulent use of a credit card and second-degree forgery are "240 months. TO RUN CONCURRENT W/ EACH OTHER." The State concedes error on this point because the maximum sentence for a class C felony is ten

years. *See* Ark. Code Ann. § 5-4-401(a)(4) (Repl. 2006). We therefore reverse on this point and remand the case to the trial court for resentencing.

ROBBINS and VAUGHT, JJ., agree.